



## PATENT COOPERATION TREATY

## PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT  
(PCT Article 36 and Rule 70)

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Applicant's or agent's file reference <b>HARD1.068VPC</b>	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. <b>PCT/US02/38122</b>	International filing date (day/month/year) <b>25.11.2002</b>	Priority date (day/month/year) <b>28.11.2001</b>
International Patent Classification (IPC) or both national classification and IPC <b>C09J133/08</b>		
Applicant <b>JAMES HARDIE RESEARCH PTY LIMITED</b>		
<p>1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 5 sheets, including this cover sheet.</p> <p><input type="checkbox"/> This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).</p> <p>These annexes consist of a total of sheets.</p>		
<p>3. This report contains indications relating to the following items:</p> <p>I <input checked="" type="checkbox"/> Basis of the opinion</p> <p>II <input type="checkbox"/> Priority</p> <p>III <input type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p>IV <input type="checkbox"/> Lack of unity of invention</p> <p>V <input checked="" type="checkbox"/> Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p>VI <input type="checkbox"/> Certain documents cited</p> <p>VII <input type="checkbox"/> Certain defects in the international application</p> <p>VIII <input type="checkbox"/> Certain observations on the international application</p>		
Date of submission of the demand <b>05.06.2003</b>	Date of completion of this report <b>05.12.2003</b>	
Name and mailing address of the International preliminary examining authority:  <b>European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465</b>	Authorized Officer <b>Glomm, B</b> Telephone No. +49 89 2399-7158 	

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT**

International application No. **PCT/US02/38122**

**I. Basis of the report**

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

**Description, Pages**

1-45 as originally filed

**Claims, Numbers**

1-86 as originally filed

**Drawings, Sheets**

1/30-30/30 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
- ☐ the claims, Nos.:
- ☐ the drawings, sheets:

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5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

*(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)*

6. Additional observations, if necessary:

**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes: Claims	
	No: Claims	1-86
Inventive step (IS)	Yes: Claims	
	No: Claims	1-86
Industrial applicability (IA)	Yes: Claims	1-86
	No: Claims	

2. Citations and explanations

see separate sheet

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT - SEPARATE SHEET**

International application No. PCT/US02/38122

**Relevant documents:**

- D1: US 2001/028943 A1 (ARAI DA YASURO ET AL) 11 October 2001 (2001-10-11)  
D2: US 5 512 612 A (BROWN MARY L ET AL) 30 April 1996 (1996-04-30)  
D3: EP 0 683 216 A (NITTO DENKO CORP) 22 November 1995 (1995-11-22)  
D4: EP 0 673 657 A (JOHNSON & JOHNSON CONSUMER) 27 September 1995 (1995-09-27)  
D5: US 4 837 070 A (STOKES BRUCE G ET AL) 6 June 1989 (1989-06-06)  
D6: US 4 452 831 A (EICHBERGER WALTER ET AL) 5 June 1984 (1984-06-05)

**1. Novelty (Art. 33 (2) PCT)**

Each of documents D1 to D6 discloses an elastomeric joint tape comprising an adhesive applied to a face of a backing material as specified in the present main claim 1 (see D1, page 1, paragraph 1; page 1, paragraph 4 to page 2, paragraph 16; working examples 1 to 7; claims 1 to 11 and abstract; see D2, column 1, line 53 to col. 2, l. 41; col. 8, l. 14 to col. 11, l. 45; working examples 1 to 43; claims 1 to 30 and abstract; see D3, p. 2, l. 52 to p. 3, l. 36; p. 4, l. 29 to p. 6, l. 24; working examples 1 to 7; figures 1 to 13; claims 1 to 9 and abstract; see D4, p. 2, l. 30 to p. 3, l. 45; working examples 1 to 4; claims 1 to 8 and abstract; see D5, col. 2, l. 15 to col. 3, l. 10; working examples 2 to 6; figures 1 to 11; claims 1 to 21 and abstract; see furthermore D6, col. 1, l. 62 to col. 3, l. 14; claims 1 to 15 and abstract, respectively).

The attention of the applicant is drawn especially to the fact, that the parameter as specified in the last line of present main claim appears to be implicitly disclosed by each of said documents D1 to D6

Consequently, each of documents D1 to D6 anticipates the subject matter of present claim 1.

The same considerations also relate to the additional features of the following claims 2 to 86 when taking into account the full disclosure of each of

documents D1 to D6.

**Therefore the subject matter of present application is not new in view of the disclosure of each of documents D1 to D6.**

## **2. Inventive Step (Art. 33 (3) PCT)**

In view of the above objection, the discussion of the presence of an inventive step is postponed to a later stage of the examination. Providing an amended main claim which meets the requirements of Art. 33 (2) PCT, the applicant should relate the distinguishing feature to a surprising (unexpected) technical effect or make credible or plausible that the distinguishing feature is not derivable from the prior art teaching (Art. 33 (3) PCT).

## **3. Miscellaneous**

The obscure parameter in the second line of present main claim has no clear and unambiguous meaning among persons skilled in the art, such violating the Art. 6 PCT. When opening regional European phase, the applicant therefore is invited to replace said expression by suitable, clear technical features being based on any of present subclaims or relevant passages from the description.